

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying her application for Social Security Income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed August 7, 2014, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed and judgment is entered in

¹ Plaintiff's first name appears to be misspelled in the caption. (See AR 106, 117 (Plaintiff signing name as Shontia Peters).)

1 her favor.

2 **II. BACKGROUND**

3 Plaintiff was born on February 2, 1972. (Administrative
4 Record ("AR") 32, 107.) She completed 11th grade. (AR 32, 124.)
5 She had no past relevant work. (See AR 34-36, 242.)

6 On June 30, 2010, Plaintiff filed an application for SSI.
7 (AR 107-10; see AR 113.) She alleged that she had been unable to
8 work since October 5, 2005, because of seizures. (AR 107, 124.)
9 After Plaintiff's application was denied initially and on
10 reconsideration, she requested a hearing before an Administrative
11 Law Judge. (AR 74-76.)

12 A hearing was held on May 22, 2012, at which Plaintiff
13 appeared and was represented by counsel. (See AR 27.) Plaintiff
14 testified, as did a vocational expert. (See AR 27-59.) In a
15 written decision issued July 27, 2012, the ALJ determined that
16 Plaintiff was not disabled. (AR 11-17.) On October 16, 2013,
17 the Appeals Council denied Plaintiff's request for review. (AR
18 1-3.) This action followed.

19 **III. STANDARD OF REVIEW**

20 Under 42 U.S.C. § 405(g), a district court may review the
21 Commissioner's decision to deny benefits. The ALJ's findings and
22 decision should be upheld if they are free of legal error and
23 supported by substantial evidence based on the record as a whole.
24 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra
25 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
26 evidence means such evidence as a reasonable person might accept
27 as adequate to support a conclusion. Richardson, 402 U.S. at
28 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).

1 It is more than a scintilla but less than a preponderance.
2 Lingenfelter, 504 F.3d at 1035. To determine whether substantial
3 evidence supports a finding, the reviewing court "must review the
4 administrative record as a whole, weighing both the evidence that
5 supports and the evidence that detracts from the Commissioner's
6 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
7 1996). "If the evidence can reasonably support either affirming
8 or reversing," the reviewing court "may not substitute its
9 judgment" for that of the Commissioner. Id. at 720-21.

10 **IV. THE EVALUATION OF DISABILITY**

11 People are "disabled" for purposes of receiving Social
12 Security benefits if they are unable to engage in any substantial
13 gainful activity owing to a physical or mental impairment that is
14 expected to result in death or has lasted, or is expected to
15 last, for a continuous period of at least 12 months.
16 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
17 (9th Cir. 1992).

18 A. The Five-Step Evaluation Process

19 The ALJ follows a five-step sequential evaluation process in
20 assessing whether a claimant is disabled. 20 C.F.R.
21 § 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir.
22 1995) (as amended Apr. 9, 1996). In the first step, the
23 Commissioner must determine whether the claimant is currently
24 engaged in substantial gainful activity; if so, the claimant is
25 not disabled and the claim must be denied. § 416.920(a)(4)(i).

26 If the claimant is not engaged in substantial gainful
27 activity, the second step requires the Commissioner to determine
28 whether the claimant has a "severe" impairment or combination of

1 impairments significantly limiting her ability to do basic work
 2 activities; if not, a finding of not disabled is made and the
 3 claim must be denied. § 416.920(a)(4)(ii).

4 If the claimant has a "severe" impairment or combination of
 5 impairments, the third step requires the Commissioner to
 6 determine whether the impairment or combination of impairments
 7 meets or equals an impairment in the Listing of Impairments
 8 ("Listing") set forth at 20 C.F.R., Part 404, Subpart P, Appendix
 9 1; if so, disability is conclusively presumed and benefits are
 10 awarded. § 416.920(a)(4)(iii).

11 If the claimant's impairment or combination of impairments
 12 does not meet or equal an impairment in the Listing, the fourth
 13 step requires the Commissioner to determine whether the claimant
 14 has sufficient residual functional capacity ("RFC")² to perform
 15 her past work; if so, the claimant is not disabled and the claim
 16 must be denied. § 416.920(a)(4)(iv). The claimant has the
 17 burden of proving she is unable to perform past relevant work.
 18 Drouin, 966 F.2d at 1257. If the claimant meets that burden, a
 19 *prima facie* case of disability is established. *Id.*

20 If that happens or if the claimant has no past relevant
 21 work, the Commissioner then bears the burden of establishing that
 22 the claimant is not disabled because she can perform other
 23 substantial gainful work available in the national economy.
 24 § 416.920(a)(4)(v). That determination comprises the fifth and
 25 final step in the sequential analysis. § 416.920; Lester, 81

27 ² RFC is what a claimant can do despite existing exertional
 28 and nonexertional limitations. § 416.945; see Cooper v. Sullivan,
 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

B. The ALJ's Application of the Five-Step Process

At step one, the ALJ found that Plaintiff had not engaged in any substantial gainful activity since June 30, 2010, her application date. (AR 13.) At step two, he found that Plaintiff had the severe impairment of "seizure disorder." (Id.) At step three, the ALJ determined that Plaintiff's impairment did not meet or equal any of the impairments in the Listing. (AR 13-14.) At step four, the ALJ found that Plaintiff had the RFC to perform medium work but with additional limitations. (Id.)

Specifically, Plaintiff "can perform work that does not require climbing ladders, ropes or scaffolds, or balancing; does not require any exposure to hazardous machinery, unprotected heights, or other high risk, hazardous or unsafe conditions, and does not require the driving of a motor vehicle (i.e., seizure precautions)." (AR 14.) The ALJ further found that Plaintiff was restricted to work that "would not pose a danger to oneself or others." (*Id.*) The ALJ found that Plaintiff had no past relevant work. (AR 16.) At step five, based on the VE's testimony, the ALJ concluded that Plaintiff could perform jobs that existed in significant numbers in the national economy. (AR 16-17.) Accordingly, he found Plaintiff not disabled. (AR 17.)

V. DISCUSSION

The ALJ Gave Clear and Convincing Reasons for Discounting Plaintiff's Credibility

Plaintiff contends only that the ALJ failed to give clear and convincing reasons for rejecting her testimony. (J. Stip. at 3-5.) The ALJ did not err.

1 1. Applicable law

2 An ALJ's assessment of symptom severity and claimant
3 credibility is entitled to "great weight." See Weetman v.
4 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
5 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
6 believe every allegation of disabling pain, or else disability
7 benefits would be available for the asking, a result plainly
8 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674
9 F.3d 1104, 1112 (9th Cir. 2012) (internal quotation marks
10 omitted).

11 In evaluating a claimant's subjective symptom testimony, the
12 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d
13 at 1035-36. "First, the ALJ must determine whether the claimant
14 has presented objective medical evidence of an underlying
15 impairment [that] could reasonably be expected to produce the
16 pain or other symptoms alleged." Id. at 1036 (internal quotation
17 marks omitted). If such objective medical evidence exists, the
18 ALJ may not reject a claimant's testimony "simply because there
19 is no showing that the impairment can reasonably produce the
20 degree of symptom alleged." Smolen v. Chater, 80 F.3d 1273, 1282
21 (9th Cir. 1996) (emphasis in original).

22 Second, if the claimant meets the first test, the ALJ may
23 discredit the claimant's subjective symptom testimony only if he
24 makes specific findings that support the conclusion. See Berry
25 v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding
26 or affirmative evidence of malingering, the ALJ must provide
27 "clear and convincing" reasons for rejecting the claimant's
28 testimony. Lester, 81 F.3d at 834; Ghanim v. Colvin, 763 F.3d

1 1154, 1163 & n.9 (9th Cir. 2014).

2 In assessing a claimant's credibility, the ALJ may consider
3 (1) ordinary techniques of credibility evaluation, such as the
4 claimant's reputation for lying, prior inconsistent statements,
5 and other testimony by the claimant that appears less than
6 candid; (2) unexplained or inadequately explained failure to seek
7 treatment or to follow a prescribed course of treatment; (3) the
8 claimant's daily activities; (4) the claimant's work record; and
9 (5) testimony from physicians and third parties. Thomas v.
10 Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002); Smolen, 80 F.3d
11 at 1284. If the ALJ's credibility finding is supported by
12 substantial evidence in the record, the reviewing court "may not
13 engage in second-guessing." Thomas, 278 F.3d at 959.

14 2. Relevant background

15 On December 9, 2010, Plaintiff completed a Seizure
16 Questionnaire with her sister's help. (AR 116-19.) Plaintiff
17 stated that she began having seizures in 2006 and continued to
18 have them "every other day." (AR 116.) She said her most recent
19 seizures had occurred on November 10, 11, and 22 and December 1
20 and 8, 2010. (Id.) When Plaintiff had a seizure, she lost
21 consciousness, had convulsions, bit her tongue "really bad," and
22 lost bladder control. (Id.) She estimated that her seizures
23 lasted between five and 10 minutes and said that afterward she
24 felt weak, tired, and "really out of it." (Id.) Following a
25 seizure she would sleep for a "longtime [sic]" and would "feel
26 normal again" upon waking. (Id.)

27

28

1 Plaintiff said she had been taking Dilantin³ since 2006 and
 2 always took her medication but, somewhat contradictorily,
 3 occasionally ran out because of "lack of funds." (AR 118.) She
 4 said that the medicine controlled her seizures "every now, then"
 5 but that she still "ha[d] them frequently." (Id.) She said she
 6 was seen by a medical provider twice a month for her seizures.
 7 (Id.)

8 On January 29, 2011, Plaintiff completed a second Seizure
 9 Questionnaire. (AR 120-22.) She stated that she began having
 10 seizures in 2005 and continued to have them "every other day."
 11 (AR 120.) She said her most recent seizures had occurred on
 12 January 22, 23, 25, and 27, 2011. (Id.) When Plaintiff had a
 13 seizure, she lost consciousness, had convulsions, bit her tongue,
 14 and lost bladder control. (Id.) She estimated that her seizures
 15 lasted between three and five minutes and said that afterward she
 16 felt "drained" and "we[a]lk," with "alot [sic] of body pain."
 17 (Id.) After a seizure, she would feel normal again within "two
 18 to three hours, after sleeping." (Id.)

19 Plaintiff again said she always took her medication but
 20 occasionally ran out, although this time she did not attribute it
 21 to lack of funds. (AR 121.) She said that the medicine
 22 controlled her seizures "not at all sometimes." (Id.) She was
 23 seen twice a month by a medical provider. (Id.)

24 At the May 22, 2012 hearing, Plaintiff testified that she

25
 26 ³ Dilantin is a brand name for phenytoin, an
 anticonvulsant. See Phenytoin, MedlinePlus,
 27 <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a682022.html> (last
 28 updated May 1, 2009). Phenytoin controls certain types of seizures
 by decreasing abnormal electrical activity in the brain. Id.

1 did not have a driver's license, had been given a ride to the
2 hearing, and generally took the bus for "every day
3 transportation." (AR 32-33.) She initially said she had not
4 worked in the previous 15 years but then said she had performed
5 in-home child care up until 2005. (AR 33, 35.) She testified
6 that in 2005, she was hired for a similar position but the offer
7 was withdrawn when the employer learned that she had epilepsy.
8 (AR 34.)

9 Plaintiff testified that she continued to take Dilantin and
10 had also begun taking Keppra "four or five months" earlier, at
11 the beginning of 2012.⁴ (AR 37-38, 43.) She brought her
12 medication to the hearing to show the ALJ because "I'm slow and
13 confused sometimes." (AR 37.) She said the Keppra "helps me
14 better" than the Dilantin alone. (AR 38.) When asked by the ALJ
15 about the many indications in Plaintiff's medical records that
16 she had not been taking her medicine, she said, "I've been taking
17 them but they haven't given me - was not enough." (Id.)

18 Plaintiff clarified:

19 I takes [sic] my medication every day but by me taking
20 them they said it still wouldn't - I still would go into
21 the seizures, as well. So they told me I've been taking
22 my medication but not enough medication. So that's when
23 they put me on the Keppra.

24 (AR 39.) Plaintiff testified that the seizures had not

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26 ⁴ Keppra is the brand name for levetiracetam, an
27 anticonvulsant that treats seizures by "decreasing abnormal
28 excitement in the brain." See Levetiracetam, MedlinePlus,
<http://www.nlm.nih.gov/medlineplus/druginfo/meds/a699059.html> (last updated Sept. 1, 2009).

1 diminished since she began taking Keppra. (Id.) She said, "I
2 have them every day." (Id.)

3 When asked about her medical providers, Plaintiff testified
4 that she continued to see Dr. Munther Hijazin, was not sure where
5 his offices were, and thought he was a neurologist. (Id.)
6 Plaintiff said that she was "very confused" and "would have to
7 think a lot to remember." (Id.) She said that she also received
8 emergency treatment at Centinela Hospital. (AR 40-41.)

9 Plaintiff testified that she was "[s]cared to do too much
10 during the day." (AR 41.) She said she "tr[ied] to sit and be
11 comfortable and relax myself" and "not to do too much" "[b]ecause
12 I was told not to do too much." (AR 41-42.)

13 I walk around. I basically just keep to myself, you
14 know, make sure everything okay [sic]. If I could work
15 I could but I can't so I just keep to myself around the
16 day, you know, and pray that I don't pass out.

17 (AR 42.) Plaintiff said she did not cook but did laundry and
18 "[e]very once in awhile" would clean house or shop for food.
19 (Id.) She said she "sometimes" would exercise by "try[ing] to
20 walk around but not too much." (Id.)

21 Plaintiff testified that she had last visited the emergency
22 room two weeks before. (AR 44.) She said she last had a seizure
23 the morning of the hearing. (Id.) Plaintiff said that she lost
24 consciousness and bladder control when she had seizures. (AR 45-
25 46.) She said she convulsed, "spit," "slob[bered]," and "tore up
26 my tongue[]." (AR 46.) She said that after having a seizure,
27 she would sweat, be confused for a while, and sleep for a "long
28 time." (Id.) She said if she slept for too long, witnesses to

1 her seizure would become nervous that another seizure was
2 imminent and would call for an ambulance. (Id.)

3 When asked whether she had experienced an aura before a
4 seizure, Plaintiff testified:

5 I see lights. I'll be stiff where I won't - or I go into
6 a stare. I see rainbow colors, everything and then I
7 [witness snaps fingers] go.

8 (AR 47.) Plaintiff said she had been experiencing preseizure
9 auras since 2005. (Id.) She said that her seizure disorder had
10 worsened since she filed her application for SSI, in June 2010.

11 (AR 48.) She said she was "[h]aving many now" and that "if I'm
12 going to [have] one, I'll go into a four," one after the other,
13 "before I come back to myself." (Id.) She said that the longest
14 seizure she had experienced had lasted three or four hours.

15 (Id.)

16 Plaintiff estimated that if she were employed, she would
17 miss two or three days a month because of her seizure disorder.

18 (AR 49.)

19 3. Analysis

20 The ALJ "acknowledge[d] that the claimant has a history of
21 seizure disorder . . . which can reasonably result in certain
22 functional limitations." (AR 14 (citing AR 158-240).) He found,
23 however, that "the balance of the record suggests that the
24 claimant has had a history of medication noncompliance as
25 evidenced by consistently sub-therapeutic levels of anti-
26 convulsant medications on laboratory testing." (AR 14-15.)
27 Accordingly, the ALJ found that Plaintiff's "allegations of
28 disability stemming from her alleged 'frequent' seizures are not

1 entirely credible given her documented history of not abiding by
 2 her treatment regimen." (AR 15.)⁵

3 In order to receive SSI benefits, a claimant must follow
 4 treatment prescribed by her physician if the treatment can
 5 restore her ability to work. § 416.930(a). Failure to do so,
 6 absent "good reason," will lead to a finding of nondisability
 7 even if the claimant's impairment meets the disability criteria.
 8 § 416.930(b); see Gamble v. Chater, 68 F.3d 319, 321 (9th Cir.
 9 1995). Further, if a claimant's impairment can be controlled
 10 with medication, she will be found not disabled. Warre v. Comm'r
 11 of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006)
 12 ("Impairments that can be controlled effectively with medication
 13 are not disabling for the purpose of determining eligibility for
 14 SSI benefits."). In the case of seizures in particular, SSR 87-6
 15 mandates that when they are alleged to occur at a disabling
 16 frequency, a record of anticonvulsant blood levels is required
 17 before a claim can be granted. SSR 87-6, 1987 WL 109184, at *2
 18 (1987) (recognizing that situations when seizures are not under
 19 good control are usually attributable to noncompliance with
 20 prescribed treatment).

21 An ALJ may rely upon a claimant's noncompliance with
 22 treatment as a clear and convincing reason for an adverse
 23 credibility finding. See Orn v. Astrue, 495 F.3d 625, 638 (9th
 24 Cir. 2007); Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989) (ALJ

25
 26 ⁵ Plaintiff objects that the ALJ did not specify which of
 27 her statements he found not credible. (J. Stip. at 3.) But these
 28 findings make clear that he rejected her claims of always taking
 her medicine and of the disabling effects of the seizures.

1 may rely on "unexplained, or inadequately explained, failure to
 2 seek treatment" in rejecting claimant's credibility). Courts
 3 have consistently found that evidence of noncompliance with
 4 prescribed medications undermines allegations of a disabling
 5 seizure disorder. See Bishop v. Colvin, No. ED CV 13-00210 RZ,
 6 2013 WL 6094241, at *2 (C.D. Cal. Nov. 19, 2013); Whaley v.
 7 Astrue, No. CV 10-7210-OP, 2011 WL 5434424, at *5 (C.D. Cal. Nov.
 8 9, 2011); Pa Dee Thao v. Astrue, No. 1:10-CV-0244-SKO, 2011 WL
 9 2516151, at *8-9 (E.D. Cal. June 21, 2011); Juarez v. Astrue, No.
 10 EDCV 10-1219 RNB, 2011 WL 2135087, at *1 (C.D. Cal. May 27,
 11 2011); Prather v. Astrue, No. 2:08-cv-01476 KJN, 2010 WL 2102824,
 12 at *9 & n.11 (E.D. Cal. May 24, 2010); Johnson v. Astrue, No. CV
 13 07-507 JC, 2009 WL 2579525, at *13 (C.D. Cal. Aug. 19, 2009);
 14 Pham v. Shalala, No. C-94-20745-JW, 1996 WL 411603, at *3 (N.D.
 15 Cal. July 16, 1996); see also Lewis v. Apfel, 236 F.3d 503, 513
 16 (9th Cir. 2001) (affirming finding that claimant's seizure
 17 disorder did not meet listing when seizures were "largely a
 18 result of noncompliance with his prescribed therapy").

19 The ALJ noted that Plaintiff had been prescribed 100
 20 milligrams of Dilantin three times daily and, more recently, 1000
 21 milligrams of Keppra once daily. (AR 15; see AR 37-38, 43, 157,
 22 308, 311, 315, 325.) Contrary to Plaintiff's testimony and a
 23 treating physician's statement that Plaintiff complied with her
 24 prescribed regimen, the ALJ found "overwhelming documentation of
 25 sub-therapeutic drug levels and medication noncompliance."⁶ (AR

27 ⁶ On February 16, 2011, treating doctor Rosabel Young
 28 completed a form indicating that Plaintiff complied with prescribed
 medication, maintained therapeutic blood levels of anticonvulsant,

1 15.) Further, the ALJ found that each of Plaintiff's medically
 2 documented seizures was attributable to her noncompliance.⁷

3 (Id.)

4 The anticonvulsant phenytoin must be present at a
 5 concentration of between 10 and 20 micrograms per milliliter of
 6 blood (mcg/mL) in order to be effective. (See AR 15, 180, 201,
 7 245); Therapeutic Drug Levels, MedlinePlus, <http://www.nlm.nih.gov/medlineplus/ency/article/003430.htm> (last updated
 8 Apr. 29, 2013) (noting that drug-level testing is important for
 9 people taking phenytoin to control seizures). As the ALJ noted,
 10 on October 18, 2005, Plaintiff reported a grand mal seizure,⁸

11
 12 and suffered seizures nonetheless. (AR 247; see also AR 250 (on
 13 same day, Dr. Young noting that Plaintiff had returned after "3
 14 year hiatus" for epilepsy treatment and was applying for
 15 disability).) The ALJ dismissed Dr. Young's statements because he
 16 found them to reflect Plaintiff's own allegations rather than
 17 objective findings and because they were contradicted by
 18 "overwhelming" evidence of Plaintiff's noncompliance. (AR 15); see
 19 Fair, 885 F.2d at 605 (finding that ALJ properly disregarded
 20 physician's opinion premised on claimant's noncredible subjective
 21 complaints); Thomas, 278 F.3d at 957 (same); Batson v. Comm'r Soc.
Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004) (holding that ALJ
 may discredit treating physician's opinion if "unsupported by the
 record as a whole . . . or by objective medical findings").
 Plaintiff does not challenge the ALJ's rejection of Dr. Young's
 statement.

22 ⁷ Plaintiff's August 16, 2005 report of seizures, the
 23 earliest in the record, appears to have predated her diagnosis and
 24 treatment with Dilantin. (See AR 164, 170-71 (diagnosing seizure
 25 disorder, noting no medications, prescribing Dilantin and next-day
 26 followup with regular physician).) In November 11, 2010, Plaintiff
 visited the emergency room and reported a seizure but left before
 being triaged, so her phenytoin level was not tested; treatment
 notes appear to indicate that she was "uncooperative on Dilantin."
 (AR 183-85.)

27 ⁸ A person suffering a grand mal, or tonic-clonic, seizure
 28 loses consciousness, her muscles stiffen, and she experiences

1 after which her phenytoin level was found to be less than 0.6
2 mcg/mL. (See AR 173, 180.) On November 11, 2009, Plaintiff was
3 diagnosed with "recurrent generalized seizures," which were
4 attributed to her noncompliance with anticonvulsant medication.
5 (AR 15; see AR 186-88 (drug-level testing showing less than 0.05
6 mcg/mL of phenytoin in blood).) In August 2010, she was again
7 treated for reported seizures, and although she claimed to be
8 compliant, she was found to have phenytoin levels below 0.5
9 mcg/mL. (AR 190, 197.)

10 During a December 18, 2010 neurological consultation,
11 Plaintiff reported that she was experiencing daily seizures
12 despite her Dilantin prescription, but drug-level testing ordered
13 by the examining physician showed only 1.0 mcg/mL of the drug in
14 her blood. (AR 15; see AR 241-42, 245 (noting "abnormal"
15 phenytoin level of 1.0 mcg/mL).) On February 3, 2011, Plaintiff
16 "admit[ted] taking medication irregularly." (AR 15; see AR 271.)
17 A few weeks later, on February 22, Plaintiff was admitted to the
18 emergency room with complaints of seizure activity, reported that
19 she had not taken her medication that morning, and had a
20 phenytoin level of only 1.7 mcg/mL. (AR 15; see AR 444, 454.)

21 On November 4, 2011, Plaintiff admitted that "she has not
22 had her medications in a couple of months," and drug-level
23 testing showed only 2.0 mcg/mL of phenytoin in her blood. (AR
24

25 violent muscle contractions. See Grand Mal Seizure, Mayo Clinic,
26 <http://www.mayoclinic.org/diseases-conditions/grand-mal-seizure/basics/definition/con-20021356> (last updated June 10, 2014); Tonic-Clonic Seizures, Epilepsy Foundation, <http://www.epilepsy.com/learn/types-seizures/tonic-clonic-seizures> (last updated Mar. 2014).

1 15; see AR 276, 280.) About two weeks later, on November 17,
2 Plaintiff reported seizures at the emergency room and was found
3 to have a subtherapeutic level of phenytoin in her blood. (AR
4 431 (drug-level testing showing phenytoin level of 4.3 mcg/mL).)
5 On December 24, 2011, Plaintiff admitted to noncompliance with
6 her medication, which was confirmed by drug-level testing. (AR
7 15; see AR 369 (doctor noting, "[s]eizure disorder secondary to
8 noncompliant with medication," Plaintiff "had multiple admissions
9 in the ER for seizure," and advising Plaintiff to "take the
10 medication regularly" and "see her doctor to monitor the level
11 closely"), 375-76 (doctor noting Plaintiff's admission of
12 noncompliance and subtherapeutic Dilantin level), 390 (drug-level
13 testing showing phenytoin level of 4.4 mcg/mL), 391.)

14 On February 2, 2012, Plaintiff reported seizures, presented
15 to the emergency room and suffered another; she said she had
16 taken only Keppra, not Dilantin, that morning, and drug-level
17 testing showed her phenytoin level to be only 0.9 mcg/mL.⁹ (AR
18 15; see AR 325-26, 339.) On March 9, 2012, Plaintiff was again
19 seen at the emergency room with complaints of seizures, and her
20 phenytoin level was found to be only 0.7 mcg/mL. (AR 15; see AR
21 285.)

22 Indeed, every drug-level test in the record, spanning a
23 period of seven years, showed that phenytoin was present in
24

25 ⁹ Levetiracetam must be present at a concentration of
26 between 12 and 46 mcg/mL to be effective. See Test ID: LEVE, Mayo
27 Clinic, [http://www.mayomedicallaboratories.com/test-catalog/
Clinical+and+Interpretive/83140](http://www.mayomedicallaboratories.com/test-catalog/Clinical+and+Interpretive/83140) (last visited Jan. 16, 2015). Even
28 once Keppra was added to Plaintiff's treatment regimen, her blood
was tested only for phenytoin.

1 levels far below those required for therapeutic effect. (See AR
2 234 (Apr. 29, 2008 drug-level testing showing only 1.0 mcg/mL of
3 Dilantin in blood), 223 (Jan. 13, 2009 drug-level testing showing
4 less than 0.8 mcg/mL of Dilantin in blood), 221 (July 21, 2009
5 drug-level testing showing only 2.1 mcg/mL of Dilantin in blood),
6 201 (Dec. 21, 2009 drug-level testing showing less than 0.5
7 mcg/mL of phenytoin in blood); see also AR 214 (on Apr. 4, 2008,
8 Plaintiff reporting that she took Dilantin only once daily - not
9 three times, as prescribed - because it made her feel "high" and
10 that she had not had neurological consultation in over a year),
11 271 (on Feb. 3, 2011, examining neurologist noting, "patient
12 admits taking medication irregularly").)

13 Moreover, that doctors continued to prescribe phenytoin with
14 little variation (see AR 369 (altering dosage from 300 milligrams
15 each night to 200 milligrams twice a day)), consistently treated
16 Plaintiff with phenytoin in the emergency room (see AR 164, 284-
17 86, 312, 369, 445), and attributed her continued seizures to her
18 failure to take her medications (see AR 244, 271, 369) is
19 evidence that compliance with treatment recommendations would
20 have restored her ability to work, making her seizure disorder
21 not disabling. See § 416.930(a); Warre, 439 F.3d at 1006.
22 Indeed, if the phenytoin had proved ineffective when taken as
23 prescribed, they may well have prescribed other or additional
24 treatment. That Plaintiff consistently failed to adhere to the
25 treatment prescribed to manage her seizure disorder both
26 precluded the ALJ from finding her disabled and provided a clear
27 and convincing reason for discounting the credibility of her
28 allegations. § 416.930; Orn, 495 F.3d at 638; Fair, 885 F.2d at

1 603. The ALJ's rejection of Plaintiff's claims that she was
2 compliant but Dilantin did not work (AR 15; see AR 118, 206; J.
3 Stip. at 4) was thus supported by substantial evidence. Cf.
4 Bishop, 2013 WL 6094241, at *2 ("Plaintiff not only had been
5 noncompliant in his medical regimen, but he also falsely stated
6 that he had been compliant.").

7 Plaintiff points to her statement in her December 2010
8 Seizure Questionnaire that she occasionally ran out of medication
9 because of "lack of funds" to pay for it. (J. Stip. at 4; see AR
10 118.) Although the Commissioner cannot "deny benefits to someone
11 because [s]he is too poor to obtain medical treatment that may
12 help [her]," Gamble, 68 F.3d at 322, Plaintiff's claim that her
13 longstanding noncompliance was attributable to financial
14 difficulties is unsupported by the record. Plaintiff did not
15 attribute her alleged lack of medication to financial
16 difficulties in her January 2011 Seizure Questionnaire (AR 122)
17 and made no mention of financial difficulties when questioned by
18 the ALJ about her documented history of noncompliance (see AR 38-
19 39). Nor do Plaintiff's treatment records show that she ever
20 told her medical providers that she was struggling to pay for her
21 medications. The only explanations she gave for her
22 noncompliance were that she did not like the side effects of the
23 medication. (See AR 214 (Plaintiff reporting that Dilantin made
24 her feel "high"), 444 (Plaintiff stating that she wanted to eat
25 before consuming morning dose of Dilantin)); cf. Pa Dee Thao,
26 2011 WL 2516151, at *8 (rejecting contention that claimant lacked
27 funds to remain compliant when unsupported by record). Thus,
28 even if at one point Plaintiff was noncompliant because she

1 couldn't afford the medicine, the record demonstrated that she
2 continued to be noncompliant even when able to afford it.

3 Accordingly, any error was harmless. See Stout v. Comm'r, Soc.
4 Sec. Admin., 454 F.3d 1050, 1055 (9th Cir. 2006) (error is
5 harmless when irrelevant to ultimate disability determination).

6 Nor did the ALJ err in failing to address Plaintiff's single
7 complaint in seven years that Dilantin made her feel "high." (J.
8 Stip. at 4; see AR 214.) "[I]n interpreting the evidence and
9 developing the record, the ALJ does not need to discuss every
10 piece of evidence." Howard ex rel. Wolff v. Barnhart, 341 F.3d
11 1006, 1012 (9th Cir. 2003) (internal quotation marks omitted).
12 The record contains no evidence that Plaintiff sought to address
13 the side effects of phenytoin with her prescribing physician.

14 Cf. Thomas, 278 F.3d at 960 (holding that ALJ properly discounted
15 alleged side effects caused by medication when claimant offered
16 no objective evidence of side effects but only her own
17 statements, which ALJ found not entirely credible); see also
18 Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997)
19 (upholding ALJ's finding that claimant generally lacked
20 credibility as permissible basis for rejecting claimant's
21 testimony). Indeed, Plaintiff's failure to adhere to the
22 prescribed dosage of phenytoin may have prevented her from
23 overcoming its side effects. See Phenytoin, Epilepsy Found.,
24 <http://www.epilepsy.com/medications/phenytoin> (last visited Jan.
25 16, 2015) (noting that most phenytoin takers have little trouble
26 with side effects and common side effects tend to diminish within
27 several days). Nor did any of her doctors opine that any feeling
28 of being "high" would interfere with Plaintiff's ability to

function.

For similar reasons, the ALJ did not err in failing to credit her statement that she would likely miss two or three days of work a month because of her seizure disorder. (J. Stip. at 4; see AR 49.) That claim was not substantiated by medical evidence or by the finding of any doctor. According to the record, even when noncompliant, Plaintiff sought treatment for alleged seizures only 10 times in nearly seven years. (See AR 164, 173, 183-85, 186-88, 190, 285, 325-26, 369, 431, 444; see also AR 214 (Plaintiff reporting in Apr. 2008 that last seizure was six months earlier).) Nor has Plaintiff submitted an electroencephalogram (EEG)¹⁰ or other testing reflecting frequent seizures. (See AR 202 (in Nov. 2009, normal CT scan of brain), 399 (in Dec. 2011, normal MRI of brain).) And doctors who treated or examined her did not opine that her disorder would so limit her work attendance. (See AR 244 (examining doctor Prakash Desai stating that Plaintiff's sole limitation was to "avoid working in an environment where she would endanger herself or others if she was to have a seizure"), 156 (treating doctor Jimmy

¹⁰ An EEG is a test to measure the electrical activity of the brain. See EEG, MedlinePlus, <http://www.nlm.nih.gov/medlineplus/ency/article/003931.htm> (last updated Feb. 10, 2014). If an epileptic seizure occurs during an EEG, the test will reflect abnormal brain activity. See Checking Brain Waves, Epilepsy Found., <http://www.epilepsy.com/learn/diagnosis/eeg> (last updated Aug. 2013); Ambulatory EEG, Epilepsy Found., <http://www.epilepsy.com/learn/diagnosis/eeg/ambulatory-eeg> (last updated Aug. 2013). Thus, an ambulatory EEG could be used to confirm that a patient was suffering from seizures as frequently as every other day. See Ambulatory EEG, NYU Comprehensive Epilepsy Ctr., <http://epilepsy.med.nyu.edu/diagnosis-treatment/eeg/ambulatory-eeg#sthash.PHpbtotv.dpbs> (last visited Jan. 14, 2015).

1 Soliman noting that his office had treated Plaintiff for
2 approximately nine months and that she "states she requires
3 chaperone at all times due to the frequency of seizures"), 248
4 (on Feb. 16, 2011, treating doctor Rosabel Young noting only
5 Plaintiff's difficulty in finding employment after disclosing
6 condition).) Rather, their statements and treatment of Plaintiff
7 show that they believed that her seizures could be controlled
8 with medication. Warre, 439 F.3d at 1006.

9 On appellate review, this Court is limited to determining
10 whether the ALJ properly identified reasons for discrediting
11 Plaintiff's credibility. Smolen, 80 F.3d at 1284. Plaintiff's
12 long-term noncompliance with prescribed seizure medicine was
13 demonstrated by her own statements to her doctors, every drug-
14 level test in the record, and the opinions of treating and
15 examining physicians and thus was a sufficiently specific basis
16 for discounting her allegations of a disabling seizure disorder,
17 and the ALJ's reasoning was therefore clear and convincing. See
18 Tommasetti v. Astrue, 533 F.3d 1035, 1039-40 (9th Cir. 2008);
19 Houghton v. Comm'r Soc. Sec. Admin., 493 F. App'x 843, 845 (9th
20 Cir. 2012). Because the ALJ's findings were supported by
21 substantial evidence, this Court may not engage in second-
22 guessing. See Thomas, 278 F.3d at 959.

23 Accordingly, remand is not warranted.
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1 VI. CONCLUSION

2 Consistent with the foregoing, and pursuant to sentence four
3 of 42 U.S.C. § 405(g),¹¹ IT IS ORDERED that judgment be entered
4 AFFIRMING the decision of the Commissioner and dismissing this
5 action with prejudice. IT IS FURTHER ORDERED that the Clerk
6 serve copies of this Order and the Judgment on counsel for both
7 parties.

8
9 DATED: January 23, 2015


10 JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 ¹¹ This sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record, a
28 judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."